

UNITED STATES BANKRUPTCY COURT
DISTRICT OF RHODE ISLAND

JOHN McDONOUGH JR.
Plaintiff,

Bk No. 10-10228

VS. Adversary Case No. 10-ap-01028

DEUTSCHE BANK NATIONAL TRUST
COMPANY as TRUSTEE, FOR
REGISTERED HOLDERS OF
AMERIQUEST MORTGAGE
SECURITIES INC., ASSET-BACKED
PASS-THROUGH CERTIFICATES
SERIES 2004-R11

Defendant and Third Party Plaintiff

VS.

OLD REPUBLIC NATIONAL TITLE INSURANCE
COMPANY and

Third Party Defendant

THIRD PARTY COMPLAINT

Now comes Deutsche Bank National Trust Company, as Trustee, in trust for the Registered Holders of Ameriquest Mortgage Securities Inc., Asset-Backed Pass-Through Certificates, Series 2004-R11 ("Deutsche") and pursuant to Fed. R. Bankr. P. 7014 and Fed.Rules Civ.Proc. 14(a), brings the within complaint.

PARTIES

1. Plaintiff, John McDonough, Jr. ("Plaintiff") is a resident of the Town of Lincoln, State of Rhode Island.
2. Defendant, Deutsche is a financial institution with an address of 1761 E. Saint Andrew Place, Santa Ana, CA 92705.
3. Third Party Defendant, Old Republic National Title Insurance Company ("Old Republic"), is a title insurance company with an address of 400 Second Avenue South, Minneapolis, MN 55401.

FACTS

4. On or about November 10, 2004, Ameriquest Mortgage Company extended a

loan to Plaintiff in the amount of \$280,500.00 (the "Loan").

5. The Loan is evidenced by a promissory note executed by Plaintiff (attached hereto as Exhibit "A", the "Note").
6. The Note is secured by a mortgage (attached hereto as Exhibit "B", the Mortgage) encumbering that property described as 26-28 Arnold Street, Lincoln, RI 02865 (the "Property").
7. The Loan is insured by a title insurance policy issued by Old Republic (attached hereto as Exhibit "C", the "Policy").
8. Through inadvertence or mistake of Old Republic or its agents, the Mortgage was recorded with an incorrect exhibit A legal description.
9. On or about August 12, 2008, Ameriquest Mortgage Company assigned the Mortgage to Deutsche (attached hereto as Exhibit "D").
10. On or about October 2, 2008, Old Republic recorded an Affidavit of Scrivener's Error in an apparent attempt to correct the issue of the incorrect legal description in the Mortgage (attached hereto as Exhibit "E").
11. On or about May 20, 2010, Plaintiff initiated the within adversarial proceeding by filing a complaint challenging the validity of a mortgage held by Deutsche.

COUNT I - INDEMNIFICATION

12. The Policy insures Deutsche against any loss or damage sustained or incurred by virtue of improper vesting of title to the Property in favor of the insured.
13. The incorrect legal description contained in the Mortgage improperly vested title to the Property, causing damage to Deutsche.

WHEREFORE, Deutsche prays that this Honorable Court enter Judgment as follows:

- a. That Old Republic indemnify Deutsche for any loss or damage suffered as a result of the recording of the incorrect legal description in the Mortgage.
- b. That Old Republic indemnify Deutsche for any loss or damage suffered as a result of this lawsuit.

Deutsche,
by its Attorney,

/s/ Joseph M. Dolben
Nicholas Barrett & Associates
Joseph M. Dolben, Esq.
999 South Broadway
East Providence, RI 02914
(401) 654-6162/fax (401) 654-6163

Dated: December 30, 2010

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Defendant

CERTIFICATE OF SERVICE

I hereby certify that on December 30, 2010, I electronically filed a Third Party Complaint with the Clerk of the Bankruptcy Court for the District of Rhode Island using the CM/ECF System. The following participants have received notice electronically:

Christopher Lefebvre, Esq. court@lefebvrelaw.com

/s/ Joseph M. Dolben